IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
WRIT PETITION NO.2255 OF 2006

M/s.Picasso Overseas & anr. .. .. Petitioners
v/s.
Union of India & ors. .. .. Respondents

Mr.Anil Belani i/by Jerry Lewis for petitioners.
Mr.Anil Singh with Mr.Y.R.Mishra for respondents.

CORAM : H.L. GOKHALE &
J.P. DEVADHAR, JJ.

DATED : 11th October 2006

P.C. :

1. Rule. Rule is made returnable forthwith. We have perused the Petition and the reply and have heard both the Counsel.

2. The petitioners seek to challenge the order in original dated 27th October 2004 passed by the Joint Commissioner & Adjudicating Officer against the petitioners. The order imposed a penalty of Rs.8,42,63,538/- on the petitioners. This was on the ground that the petitioners had remitted foreign exchange towards this amount for the purpose of import of goods but had failed to submit the documentary evidence justifying the import.

3. Mr.Balani appearing for the petitioners

pointed out from the record itself that the notice for hearing which was sent to the petitioners was sent to their earlier address, though the change in address was intimated to the authority concerned. The petitioners have a case on merits also and it is their case that the imports were in fact effected. He has, however, no objection to go back to the authority and he principally emphasizes that the petitioners be afforded a hearing.

4. Mr.Anil Singh appearing for the Revenue is leaving it to the Court to pass appropriate orders considering the peculiar facts of this case. He is making this statement on the instructions of Mr.Rajesh Nair, Assistant Enforcement Officer, who is present in Court.

5. In our view, the submission of Mr.Balani is quite legitimate. The petitioners were entitled to a hearing which has been denied to them. The petitioners did not get the notice and in their absence, the authority recorded in para-5 of its order that the petitioners have not filed any reply and thereafter the authority passed the impugned order. The principles of fair play require that the petitioners must get an

opportunity. For this limited reason, we interfere and set aside the order dated 27th October 2004. The proceeding will stand restored to the file of the Joint Commissioner and Adjudicating Officer. The petitioners will attend before the officer concerned on 6th November 2006 at 11 a.m. and the officer will decide the pending proceeding at the earliest and preferably within four weeks thereafter.

6. We record the statement of Mr.Balani that no separate notice will be required to be issued to the petitioners.

7. Rule is made absolute as above. We make it clear that this order does not mean any reflection on the merits of the submissions of either of the parties. No order as to costs.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)